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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1578

FLOYD CHANEY, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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To: *The Honorable The Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:*

Your petitioner, FLOYD CHANEY, respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of the State of Florida, entered November 30, 1970, and Order denying Petition for Rehearing dated January 14, 1971, affirming an opinion of the District Court of Appeals of the State of

of Florida, Fourth District, filed June 19, 1970, which Opinion affirmed a judgment of conviction in a criminal case.

OPINIONS BELOW

There was no opinion in the Supreme Court of the State of Florida, the Order being a denial of Petition for Certiorari to review the Opinion of the District Court of Appeals, Fourth District of Florida.

The Opinion of the District Court of Appeals, Fourth District of Florida, rendered June 19, 1970, is reported in 237 So. Reporter 2d, at page 281 and is contained in the Appendix to this petition.

JURISDICTION

The jurisdiction of this court is invoked under Title 28, Section 1257, United States Code, and Rule 19 of the Supreme Court of the United States.

The judgment of the Supreme Court of the State of Florida was entered on November 30, 1970, and the Petition for Rehearing was denied January 14, 1971.

QUESTIONS PRESENTED

I

Are rights guaranteed by amendments four and five violated by the search and seizure of items from a subject's vehicle taken as a result of his statements and conduct, elicited pursuant to police questioning while in custody, prior to the subject informed of his Miranda rights?

II

Are items taken by search and seizure as a result of statements and conduct of a subject, in custody, elicited pursuant to police questioning prior to the subject being informed of his Miranda rights, admissible over timely objections based on fourth amendment rights alone?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT

In the Criminal Court of Record in and for Palm Beach County, Florida, the petitioner was convicted of the crimes of Damaging or Injuring Telephone Equipment, Petty Larceny and Possession of Burglary Tools.

Before trial the petitioner filed a Motion to Suppress, wherein petitioner moved the court to suppress all evidence obtained by a search of his automobile, said motion recited that it was based on Federal Constitutional grounds as to the search and seizure (7a). The motion was heard by the trial judge and denied. Timely

objections based on the denial of the Motion to Suppress were made on Fourth Amendment grounds throughout the trial.

The evidence, both upon the hearing of the motion to suppress and upon the trial of the cause, showed the following facts:

On December 3, 1966, at about 5:00 o'clock, P.M., Palm Beach County Deputy Sheriff Walton received a call on his patrol car radio. As he testified, "It was two men in a blue Ford pickup truck that were believed to have burglarized a telephone box on Lantana Road. They were seen heading West on Lantana Road (8a)."

Deputy Walton also received a partial license number and a description of the occupants of the vehicle. Five to seven minutes later he spotted a similar vehicle and occupants, and, although the driver was not committing any traffic violation, he stopped the pickup truck (9a). The Deputy approached the vehicle and asked the driver if he had just made a telephone call. The driver, Floyd Chaney, the petitioner, said, "Yes." (11a). The Deputy then asked if Chaney would lead him back to where he had made the call. Chaney answered, "Yes." (11a). Deputy Walton now accompanied by Deputy Monroe, who had arrived on the scene in another car, followed Chaney some five miles (8a). Deputy Monroe testified that from this point on Chaney would not have been allowed to leave his presence although no formal arrest was made (9a).

Chaney drove directly to where the reported telephone tampering had taken place (11a). Deputy Monroe went to the telephone in question and examined it (12a). Chaney and his passenger got out of

the vehicle. Deputy Walton went over to Chaney's pickup truck, stuck his head in the window with a flashlight, and observed several small lock picks which he testified were not in plain view from outside the vehicle (10a). At this time, as Deputy Monroe, testified, he formally placed Chaney under arrest for "breaking and entering of a telephone" (12a), and advised him of his Constitutional rights. Deputy Monroe further testified that, without requesting permission of Chaney, and without a warrant, he proceeded to search Chaney's vehicle. Numerous items including coins and assorted tools were taken from Chaney's vehicle by Deputy Monroe and other officers now on the scene (10a).

Some of these items were introduced at trial over timely objections and after the defendant's pre-trial Motion to Suppress, which had been denied.

Petitioner, as aforesaid, was convicted of the crimes as charged at trial by jury and sentenced pursuant thereto.

On appeal to the District Court of Appeals, Fourth District of Florida, the judgment and sentence was affirmed (3a) and certiorari to the Supreme Court of the State of Florida was denied (2a).

REASONS FOR ALLOWING THE WRIT

This Court has never decided the question whether or not specific objection based on the Fifth Amendment privilege of self incrimination must be made at trial to exclude physical evidence which is the fruit of custodial interrogation done without the giving of the Miranda warnings, or would a general objection based on the Fourth Amendment's prohibition against un-

reasonable search and seizure suffice to preserve the record for appellate purposes.

This is a question of nationwide appeal and the writ should be allowed because of a definition of the rights of the accused in this area could guide the lower appellate and trial courts of the nation.

The decision of the District Court of Appeals, Fourth District of Florida (3a), and the Order of the Supreme Court of Florida denying certiorari (2a) ignores the inherent federal question which is closely related to the Courts previous ruling of *Miranda* v. *Arizona,* 384 U.S. 436, thereby the Florida Appellate Courts have approved the decision of the trial court which was decided in a way probably not in accord with the *Miranda* and subsequent related decisions of this Court.

ARGUMENT

I

Physical Evidence Obtained by Search and Seizure as the Result of Custodial Interrogation Prior to the Subject Being Advised of His Miranda Rights Is Inadmissible Against the Subject at Trial Under the Fourth and Fifth Amendments.

In *Miranda* this Court held that unless and until certain warnings, followed by a waiver of rights by an accused, are demonstrated by the prosecution at trial no evidence obtained as a result of custodial interrogation can be used against him.

The Petitioner contends that the facts he has set forth in his STATEMENT bring directly within this ruling and the subsequent cases of *Orozco* v. *Texas,* 394 U.S. 324.

In essence, the STATEMENT reveals that a deputy sheriff received a report in which two men and a pick-up truck with a certain tag number were described as being suspects in a telephone burglary which had occurred in the vicinity.

The deputy spotted the described vehicle and suspects several minutes later and pulled the pickup truck over some five miles from the scene of the alleged crime. He approached the vehicle and without saying more asked the driver, the Petitioner Chaney, if he had just made a telephone call. Chaney answered, "Yes", and the deputy asked if he would lead him back to where he had made the call. Chaney complied and led the deputy straight to the scene of the alleged crime. Although not arresting Chaney at this time the deputy later testified that from this point on Chaney was not free to leave. Thus we can infer the custodial stage began.

Shortly after all parties arrived at the scene, Chaney was formally arrested and given the *Miranda* warnings. Without Chaney's consent and without a warrant Chaney's vehicle was searched. Items from the truck were seized and introduced against Chaney at trial after the court had denied a timely motion to suppress these items based on the Fourth Amendment and general Constitutional grounds. The items, the Petitioner submits were obtained as the direct result of the custodial interrogation thus bringing the Fifth Amendment into play in conjunction with the Fourth.

The conduct of the deputy in swiftly apprehending the suspects is not questioned. However, as he was possessed of knowledge of a specific crime and suspect report, he had a duty under *Escobedo* v. *Illinois,* 378

U.S. 478, *Miranda,* and *Orozco* to give the *Miranda* warnings at the moment his suspicions were confirmed: at the time when he mentally matched up the men and vehicle he stopped with the men and the vehicle in his report. But the deputy instead chose to elicit incriminating testimony in the form of the petitioner's verbal responses to the officer's questions, and the petitioner's conduct by his leading the deputy to the scene of the alleged crime at the officer's request when the deputy knew full well the location of the crime scene. At this point the threshold between the investigatory and accusatory stages had been crossed and the deputy was, in effect, gathering evidence to be used against the defendant at trial. In fairness, it should be pointed out that the crime for which the defendant was convicted occurred in 1966 within several months of this Court's rendering the *Miranda* decision and thus possibly before the meaning of the decision was widely understood by police officers.

II

Timely Objections to the Admission of Evidence Obtained by Search and Seizure as the Result of Custodial Interrogation Prior to the Subject Being Advised of His Miranda Rights May Be Based on the Invocation of Fourth Amendment Rights Alone, or, in the Alternative, the Privilege Against Self Incrimination Is So Fundamental That the Absence of Specific Objections Based on the Fifth Amendment Is Unnecessary in These Circumstances.

The decision of affirmation of the Court of Appeals, Fourth District of Florida, as explained in its written opinion, was predicated on the motion that the search was incidental to a legal arrest. That is to say, they found the officer had probable cause to make the arrest. The Appellate Court ignored what had tran-

spired prior to the formal arrest, that is the custodial interrogation phase, which produced the self incrimina-ing conduct which led to the arrest. Addressing itself to this point the Court said that it has "reviewed the other point raised by the defendant and do not consider it to have merit or require discussion (6a)."

Before trial, defense counsel filed a written Motion to Suppress which included as grounds therefor that, "To sustain such search and seizure would be to deprive this defendant of his rights guaranteed to him under the Constitution of the United States and the State of Florida (7a)." Counsel renewed his previously denied motion to suppress at trial through timely objections to the evidence based on search and seizure grounds but never designated the specific Amendment or Amendments upon which he was relying.

The petitioner submits that because the privilege of self incrimination is so intimately related to the prohiibtion against unreasonable searches and seizures in these circumstances that objections to the introduction of evidence on search and seizure grounds alone should be deemed legally sufficient to incorporate self incrimination grounds as well.

There is ample precedent in this Court in the cases of *Leary* v. *United States,* 395 U.S. 6, and *Grosso* v. *United States,* 390 U.S. 62, for the general proposition that the privilege against self incrimination is so fundamental that the failure to assert it at trial will not amount to its waiver for the purposes of appellate review.

Ruling on yet another fact of the self incrimination privilege this Court held in *Blackburn* v. *Alabama* 361 U.S. 799, and *Brown* v. *Mississippi,* 397 U.S. 278, that

where the record revealed a patently involuntary confession the failure of counsel to properly object at trial could be overlooked on appellate review because of the fundamental nature of the error.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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